IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3-10-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.Nos.19421 and 19848 of 2007
and
MP Nos.2 and 2 of 2007

S.Bhoominathan .. Petitioner in WP 19421/2007

1.S.Sankar
2.P.Ramasamy
3.Lakshmi Ammal
4.Saravanan
5.G.Ramachandran
6.P.Subramani
7.A.Kannan
8.A.Kalidoss
9.A.Babu
10.A.Balan
11.K.Viswanathan
12.K.Ramachandran
13.K.Elumalai
14.K.Venkateswaran
15.T.Kandan
16.T.Karunakaran
17.R.Krishnan
18.M.Krishnamoorthy
19.R.Bakiaraj
20.M.Rajendran
21.S.Kumar
22.K.Raman
23.R.Lakshmi
24.R.Thirumalai
25.R.Muniyandi alias R.Chandran .. Petitioners in WP 19848/2007

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vs

1.The Special Commissioner and
Director of Survey and Settlement
Surveyagam, Chepauk,
Chennai 600 005.
2.The District Collector
Tiruvallur District
Tiruvallur
3.The Tahsildar
Taluk Office, Ambattur,
Chennai.

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.. Respondents in both petitions

Writ petitions filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records comprised in proceedings D.O.R.C.No.14095/2006/B1 on the file of the District Collector, Tiruvallur, the second respondent, dated 16.5.2007, and quash the same.

For Petitioners in both wps : Mr.V.Ayyadurai

For Respondents in both wps : Mr.V.Arun

COMMON ORDER

This order shall govern these two writ petitions in WP Nos.19421 and 19848 of 2007.

2.The petitioners herein have sought for a writ of certiorari to quash the proceedings of the second respondent in D.O.R.C.No.14095/2006/B1 dated 16.5.2007.

3.The Court heard the learned Counsel for the petitioners and also the learned Additional Government Pleader for the respondents. The affidavits in support of the petitions are perused.

4.The case of the petitioners is that they have purchased the respective landed properties in Survey Nos.103/1 to 4, 92/1, 195, 170/2, 243, 175, 287, 44/1, 236, 240/1 & 2, 242/1 & 2, 255/3, 265/1 & 2 and 167 situate in Puzhal Village of Tiruvallur District from the previous owners; that on purchase, they were actually put in possession of the respective properties; that they have been in exclusive possession and enjoyment of the same; that they came to know that the properties were classified as Government Poramboke and found so in the revenue accounts; that under the circumstances, they applied for the issuance of patta under the provisions of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act 1948 (Act 26 of 1948); that the Assistant Settlement Officer, Tiruvannamalai, after making a due inspection, directed the Tahsildar to issue ryotwari patta in terms of Sec.11(a) of Act 26 of 1948; that accordingly, the concerned Tahsildar passed orders for issuance of patta after rectifying the entry namely Government poramboke - dry - Tharisu; that while the matter stood thus, the Special Commissioner and Director of Survey and Settlement, the first respondent herein, issued a show cause notice on 21.9.2005 to the petitioners calling for explanation why the order of the Assistant Settlement Officer dated 20.7.2000, should not be cancelled for certain irregularities noticed therein; that the petitioners tendered their explanation; that there was no enquiry at all, and no orders were passed; that while so, the District Collector, the second respondent herein, has passed an order on 16.5.2007, directing the Tahsildar, the third respondent herein, to effect changes in the village accounts in relation to the lands in question by deleting the classification of the lands as ryotwari patta lands into Government poramboke on or before 31.5.2007; that a copy of that order was served by

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way of public notice; that it was not even served upon the petitioner, and hence, they have approached this Court for the relief asked for.

5.In support of the petitions, the learned Counsel Mr.V.Ayyadurai, would submit that in the instant case, once there was an inspection made by the Assistant Settlement Officer following the application made by the petitioners for the issuance of patta under Act 26 of 1948 and orders have also been passed by that authority, the Tahsildar concerned has passed orders for issuance of patta by deleting the classification of the lands found in the revenue records as Government poramboke – dry – Tharisu; that after the orders have been passed, there was a show cause notice issued by the first respondent why the orders of the Assistant Settlement Officer should not be cancelled; that there was a reply given by them; that it is pertinent to point out that neither there was an enquiry, nor orders were passed; that the petitioners were under the impression that the matter was pending before the first respondent; that while the matter stood thus, now the orders have been passed by the second respondent issuing a direction to the third respondent Tahsildar to change the classification of the lands from ryotwari patta to Government poramboke; that if the said order is given effect to, then all the pattas issued in favour of the petitioners, would be cancelled even without any enquiry; that it is not only a case where the principles of natural justice were offended, but also a case where the orders have been passed without following the procedural formalities and also against law, and hence, it has got to be set aside.

6.Added further the learned Counsel that the show cause notice was issued by the first respondent on 21.9.2005; but, the order which is referred to by the second respondent the District Collector, in the impugned order, is one which emanated from the Special Commissioner and Commissioner of Land Administration; that he was not the authority who issued the show cause notice, and hence, no orders could have been passed by the first respondent in view of the fact that no reference is made by the second respondent in the order under challenge with regard to any order passed by the first respondent.

7.Contrary to the above contentions, the learned Additional Government Pleader would submit that the show cause notice was issued by the first respondent on 21.9.2005 calling upon the petitioners to tender their explanation within a period of 15 days, why the order of the Assistant Settlement Officer on the basis of which pattas were ordered to be issued by the Tahsildar, should not be cancelled; but, the petitioners have given their explanations, admittedly, in the month of July 2006 and thus, the explanations were given out of time; that the first respondent has passed the orders cancelling the orders of the Assistant Settlement Officer dated 20.7.2000; that on communication of the said order, the present order has been passed by the second respondent directing the Tahsildar to delete the classification of the lands as ryotwari patta and to rectify it as Government poramboke; that the order of the second respondent under challenge would clearly indicate that on the basis of the letter issued by the first respondent, it has been passed; that there was a proper enquiry conducted by the first respondent; that following the same, orders have been passed; that a copy of the said order was also submitted to the second respondent on the basis of which the second respondent has passed the order which is under challenge, and under such circumstances, the writ petition has got to be dismissed.

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8.The Court paid its anxious consideration on the submissions made, and carefully looked into the materials available. After doing so, this Court is of the considered opinion that the petitioners in both the writ petitions are entitled for the reliefs asked for.

9.It is not in controversy that following the inspection made by the Assistant Settlement Officer on the lands in question, orders were passed by him on 20.7.2000 under Act 26 of 1948 namely Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act 1948, observing that those lands were classified as Government poramboke – dry – Tharisu mistakenly, and hence, pattas were to be issued. Accordingly, the Tahsildar in exercise of the powers and the directions issued by the Assistant Settlement Officer, has passed orders for issuance of patta by his proceedings dated 27.9.2002, 27.11.2002 and 30.1.2003 respectively. It is pertinent to point out that the orders passed by the Tahsildar for issuance of patta are actually in force. Pending the same, the first respondent issued a show cause notice on 20.7.2000. It is also not in controversy that there was a reply by the petitioners, though it was belatedly given. It remains to be stated that the present communication addressed by the Collector to the Tahsildar to change the classification of lands from ryotwari patta to Government poramboke does not refer to any order passed by the first respondent; but, it refers to only the order of the Special Commissioner and Commissioner of Land Administration. Further, it is pertinent to point out that before the passing of the present order, there is nothing to show that any enquiry was conducted by the first respondent to arrive at a conclusion or to set aside the orders passed by the Assistant Settlement Officer branding it as a fraudulent one or the pursuant orders passed by the Tahsildar. It is further to be pointed out that the District Collector has passed the impugned order without even conducting an enquiry. Thus, it would be quite evident that at no point of time, the petitioners were given any opportunity of being heard. Even assuming that the first respondent has passed the order, it cannot stand in law. Likewise, even if the order of the District Collector, the second respondent, is consequential, the same also cannot stand in law. Under the circumstances, this Court is of the considered opinion that without making an enquiry or giving an opportunity of being heard, orders have been passed by the first respondent deleting the classification of the lands as ryotwari patta lands which would be nothing but defeating the rights of the petitioners in whose favour already orders have been passed by the concerned Tahsildar for issuance of ryotwari patta pursuant to the inspection made by the Assistant Settlement Officer.

10.Apart from the above, even assuming that the orders of the Tahsildar were to be set aside in view of the irregularities alleged to have been committed by him, the law requires that an enquiry has got to be made by giving sufficient opportunity to the petitioners in view of the orders already passed in their favour. Hence, both the first respondent and the second respondent have neither followed the procedural formalities nor afforded to the petitioners sufficient opportunity of being heard. Thus, it is a case where this Court is able to see that the impugned order cannot stand. Accordingly, it is set aside. However, it is made clear

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that the orders passed above, will not stand in the way of the first respondent taking up the matter and pass suitable orders after giving the petitioners sufficient opportunity of being heard at the time of the enquiry to be conducted before passing suitable orders as the law would require so.

11.In the result, both the writ petitions are, accordingly, disposed of. No costs. Consequently, connected MPs are closed.

nsv/

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:
1.The Special Commissioner and
Director of Survey and Settlement
Surveyagam, Chepauk, Chennai 600 005.

2.The District Collector
Tiruvallur District, Tiruvallur.

3.The Tahsildar, Taluk Office, Ambattur, Chennai.

+1 cc to Mr.V.Ayyadurai, Advocate Sr.No.61080.

+1 cc to The Government Pleader Sr.No.61229.

VC(CO)
dcp/8.10

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